



**Republic v Kimamet (Criminal Case E004 of 2023)
[2023] KEHC 25655 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE E004 OF 2023
RB NGETICH, J
NOVEMBER 23, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

CORNELIUS KIPKOECH KIMAMET ACCUSED

RULING

1. The accused Cornelius Kipkoech Kimamet had been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). Particulars of the charge being that the accused person on the 24th day of September, 2023 at Koisaram Sub-location in Kisanana Location of Mogotio Sub- County in Baringo County unlawfully killed Daniel Kipkemoi.
2. The charge and its full particulars were read over and explained to the accused the 17th October, 2023. He denied the charge. The court called for prebail report to assist in determination whether the accused can be released on bond.
3. Pre-bail report was filed on the 14th November, 2023. The report indicates that the accused was born in the year 1999. He studied up to form 4 and obtained a D Plain in his KCSE. He started doing casual jobs for one year and in 2011, he was employed in a butchery for one year before being employed as a security guard in Menengai Geothermal office where he also worked for two months. He returned back home to do farming till the date of his arrest. He is married to Millicent Chepkangor and blessed with one child aged 6 years.
4. The family members interviewed indicated that, the victim and accused were great friends and lived in harmony for many years. They stated that the accused is a committed member of the community and committee member in Dabib relief food secretariat and a member of a cattle dip in the village. The accused has no known records of crime in the family and lived in harmony with people.



5. The victim's family member interviewed raised concern and wished that the accused remain in custody to avoid interferences with the witnesses. The victim's brother stated that the accused is a threat to the family who lives in fear of attack hence releasing the accused would haunt them. The victim's mother stated that the accused who was a friend to the victim had intention of killing him and had threatened his aunt who is her (victim's mother) sister. She noted that her son (victim) was only 26 years old and single who had a bright future. The victim's family object bail/bond and prays that the accused stay in custody to enable smooth running of the matter in court.
6. Those who were interviewed from community said accused is of good character who never showed any unbecoming behavior and was involved in development in the community; that he was a committed member in various organization in the community.
7. The local administrator indicated that the accused is a well-known person with good character in the area. He is an elder brother to the administrator hence know him well. He stated that the accused had no issue in the community and was a trustworthy person in the area. He noted that the accused was involved in the development project of the area where he was a committee member in Dabib relief food and a member of committee in a cattle dip. He further said that the accused was not a flight risk and had good ties with the community hence he has no objection if he was granted a favourable bond term to be able to continue with his responsibility as a bread winner in the family. The administrator indicated that he would ensure that the accused appear in court whenever he was required in court. The accused's father Mr Loiso Kiptoo ID no 6593729 c/o Tel no 0711409799 is ready to stand surety for him if granted the bond.
8. From inquiry by probation officer, the accused and victim were relatives and had no known grudge among themselves; that they were under the influence of alcohol even at the time of the incident hence it was not clear what happened. The probation officer's view is that despite the fact that the environment looks conducive, there is need to address the risks of re-victimization and give the accused more time in custody until such emotions are addressed.

Determination

9. Bail is a constitutional right of every citizen. Article 49(1)(h) of the Constitution is explicit that, unless there is some compelling reason, an accused person, be he a citizen or foreigner, ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case. It provides that:

“An arrested person has the right ... to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.”
10. Section 123A of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, stipulates as follows:-
 - (1) Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - (a) the nature or seriousness of the offence;
 - (b) the character, antecedents, associations and community ties of the accused person;
 - (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
 - (d) the strength of the evidence of his having committed the offence;



- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
- a. has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
 - b. should be kept in custody for his own protection.
11. And, in the [*Bail and Bond Policy Guidelines*](#), it is restated as a general guideline in Paragraph 4.9 that:
- “In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the [*Constitution*](#) of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”
12. The Guidelines then offer the following non-exhaustive factors for consideration in bail applications:
- a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
 - b. The strength of the prosecution case.
 - c. The character and antecedents of the accused person.
 - d. The failure of the accused person to observe bail or bond terms.
 - e. The likelihood of interfering with witnesses.
 - f. The need to protect the victim or victims of the crime.
 - g. The relationship between the accused person and the potential witnesses.
 - h. The best interest of child offenders.
 - i. The accused person is a flight risk.
 - j. Whether the accused person is gainfully employed.
 - k. Public order, peace and security.
 - l. Protection of the accused persons.
13. The overarching objective of bail is to ensure the accused attends his trial. Relevant matters to be considered by the court include the nature of the charge, the likely sentence, previous criminal records, the views of the family of the victim, the possibility of interference with witnesses, the temptation to abscond and, the safety of the accused.
14. From presentence report, the family of the victim are still bitter and in view of the fact that they live in the same locality, it may not be safe to release the accused at this stage of trial. Whereas the accused is entitled to bond pending trial, for his own protection, it would be proper to allow tempers cool down to avoid retaliatory attacks. Court may consider releasing accused on bond when circumstances change.



Final Orders: -

15.

1. I decline to allow bond at this stage of trial.
2. Accused to reapply bond when circumstances change.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 23RD DAY OF NOVEMBER 2023.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Momanyi & Mr. Elvis – Court Assistants

Accused present.

Mr. Abwajo for State.

